

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF JACKSONVILLE,)
)
 Petitioner,)
)
vs.) Case No. 01-0783
)
DEPARTMENT OF ENVIRONMENTAL)
PROTECTION and KIMMINS)
RECYCLING CORPORATION,)
)
 Respondents.)
_____)

RECOMMENDED ORDER

Pursuant to notice, this cause was heard by Charles A. Stampelos, the assigned Administrative Law Judge of the Division of Administrative Hearings, on June 14 and 15, 2001, in Jacksonville, Florida.

APPEARANCES

For Petitioner City of Jacksonville:

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STATEMENT OF THE ISSUE

The issue presented is whether Respondent, Kimmins Recycling Corporation (Kimmins), is entitled to use the General Permit issued under Rule 62-701.801, Florida Administrative Code (the General Permit) of the Department of Environmental Protection (Department) to operate a solid waste transfer station in the City of Jacksonville (the City).

PRELIMINARY STATEMENT

On December 12, 2000, Kimmins submitted a Notice of Intent to Use General Permit to the Department and on December 22, 2000, published the requisite newspaper notice of its intent to use the General Permit. The City timely requested an administrative hearing. Thereafter, this cause was transferred to the Division of Administrative Hearings (Division) to conduct a final hearing.

North Riverside Community Association also filed a timely challenge in DOAH Case No. 01-0784, but voluntarily dismissed its challenge.

Kimmins presented the testimony of: Hugh Gauntt, Greg Mathes, Juanita Clem, and Carolyn McCreedy. The Department offered no additional witnesses, but adopted the testimony of the Kimmins' witnesses. The City presented the testimony of Mary C. Nogas, L. Chris Pearson, and Diane Kerr. Additionally, Kimmins' exhibits identified as a through m, including Exhibit i-1 (submitted after the hearing by stipulation of the parties) were admitted in evidence. The Department's Composite Exhibit numbered 1 and the City's Exhibits numbered 1 through 3 were admitted in evidence. The City's Composite Exhibit 4, consisting of photographs taken by Ms. Kerr depicting flood conditions in and around McCoys Creek, after objection, was not admitted into evidence and has been proffered. The photographs were not revealed to Kimmins prior to hearing nor were they listed on the City's exhibit list. Kimmins claimed prejudice when Ms. Kerr was questioned about the photographs, and the undersigned agreed. The City did not request a continuance until the filing of its Memorandum of Law. Ms. Kerr testified regarding the flood conditions without restriction and her testimony has been considered herein. The City's request to continue the final hearing is denied.

A Transcript of the final hearing was filed with the Division on June 29, 2001. After receiving an extension of time, the parties filed Proposed Recommended Orders. Kimmins and the City filed Memoranda of Law. Kimmins filed a Motion to Strike several proposed findings and conclusions from the City's proposed recommended order and the City filed a Response. The Motion to Strike is denied. All of these filed post-hearing documents have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Background

1. On December 12, 2000, Kimmins filed a Notification of Intent to Use a General Permit to Construct and Operate a Solid Waste Transfer Station (Notice of Intent) pursuant to Rules 62-701.801 and 62-4.530, Florida Administrative Code, using DEP Form 62-701.900(4). The Notice of Intent includes revised documents which appear in the record.

2. Kimmins filed an addendum to its Notice of Intent on December 21, 2000, substituting a service agreement between Kimmins and Peninsular Pest Control Services, Inc. (Peninsula) dated December 19, 2000, providing for insect and vector control at the proposed facility. This addendum also contained an Emergency Services Spill Response Agreement with Environmental Remediation Services, Inc. dated January 1, 2000. Kimmins also

supplemented its Notice of Intent with a revised pest control service agreement with Peninsular dated January 19, 2001.

3. Kimmins published a Public Notice of Application for a General Permit in the Florida Times Union, Jacksonville, Florida, on December 22, 2000.

4. On January 11, 2001, the Department issued a "Notification of Use of a General Permit to Construct and Operate a Solid Waste Transfer Station from the Kimmins Recycling Corporation General Permit Number 0017894-002-50." The Department did not object to the use of the general permit, provided several changes were made to the project. The evidence indicates that these changes have been incorporated by Kimmins. See, e.g., Findings of Fact 5 and 6.

5. As part of its Notice of Intent submitted to the Department, Kimmins submitted a Site Plan and a Floor Plan, Figures 2 and 3, respectively. In response to the Department's Notice of Use, Kimmins submitted amended Figures 2 and 3 for the Notice of Intent. The revised site plan added two notes (i) regarding the base flood elevation at McCoys Creek and the elevations of the developed portions of the site, and (ii) a notation that "the site shall be designed and managed in such a way to divert stormwater [or] floodwaters away from the solid waste storage area," and showing the one-hundred (100) year flood plain delineation.

6. The revisions to the floor plan contain the same note with respect to diversion of stormwater or flood waters and shows a three-inch by eighteen-inch rounded curb along the north end of the building.

7. The facility depicted in the Notice of Intent and the revised Site and Floor Plans is a graphical description of Kimmins' intent to operate the facility, although these plans were sealed by a professional engineer, Mr. Gauntt.

8. The service area for the facility extends from just south of Savannah, Georgia, to Dade City, Florida, inland from the Atlantic Ocean in an arch almost reaching the Gulf of Mexico and passing north through Chiefland, Florida, and further north to Valdosta and Odom, Georgia.

Proposed Solid Waste Transfer Station

Location/Surrounding Area

9. The facility site for the proposed transfer station is located at 140 Stockton Street in Jacksonville, Florida.

10. The area to the east, and north of the facility to Beaver Street, is generally industrial in nature, although there is an open portion of property immediately north of the facility. Residential homes appear on the north side of Beaver Street. There is a commercial truck business on the southwest corner of Beaver Street and Stockton. There are also industrial buildings to the west of the facility.

11. By stipulation, the existing building on the proposed facility site is located north and 214.7 feet from the top of the nearest (northern) bank of McCoys Creek (Creek). A minority residential neighborhood, the closest residential area to the facility, is located south of the Creek and McCoys Creek Boulevard (Boulevard). The Boulevard is the northern boundary of this neighborhood. (The Creek and the Boulevard are referred to herein as "McCoys," see Transcript, page 430, notwithstanding the different spelling used through the Transcript, Exhibit i-1, and post-hearing submissions.)

12. The Creek is a tidally influenced creek, which floods at the intersection of Stockton Street and the Boulevard, when the incoming tides coincide with heavy rainfall. See also Findings of Fact 104-114.

13. There are trees which act as a buffer between the facility and the residential area to the south. Looking south from the facility at ground level, nothing can be seen other than trees.

14. In response to concerns about the traffic impact of the proposed transfer station on the residential area south of the facility, Kimmins submitted a revised transfer route that would bring collection vehicles and transfer vehicles in and out of the facility by way of Stockton Street north of the residential area and south of the facility. The transfer vehicles will utilize a

route to the landfill that will avoid residential areas. The trucks leaving the facility with waste will travel north on Stockton Street to Beaver Street, travel west to McDuff Avenue, then south and access I-10. This is generally considered an industrial route.

15. In terms of siting a solid waste transfer station, the Stockton Street facility is an acceptable location as it is located close to waste generation and centrally located in the City of Jacksonville, making it an acceptable transition point for solid waste. Further, it is located near major traffic corridors, I-95 and I-10, and there is a large amount of acreage available for the proposed land use and adequate buffering and screening from the standpoint of vegetation.

Prior Use

16. The building proposed to be used as a transfer station has previously been utilized by Kimmins as a construction/demolition debris recycling center.

17. The center also handled and stored municipal solid waste (MSW). Municipal solid waste coming onto the facility and under the City of Jacksonville's Ordinance could remain on site for up to ninety (90) days.

18. The recycling center was operated in a way that caused excessive noise in the neighborhood, e.g., a chipping machine operated outside, and also caused other problems due to the way

in which it was operated, including causing offensive odors and attracting vectors. Ms. Kerr noticed garbage washed from the facility into McCoys Creek during heavy rains.

19. Kimmins has not had any operations at the site for approximately three and one-half (3 1/2) years. The problems associated with the former facility are not indicative of the manner in which Kimmins expects to operate the transfer facility.

Change in Ownership/Management

20. Kimmins was a wholly-owned subsidiary of Eastern Environmental, but was acquired by Waste Management in December 1998, when Eastern was acquired. No former Kimmins managers or employees will be employed at the transfer station.

21. Kimmins Recycling Corporation is owned by Waste Management Holdings, Inc., which in turn is owned by Waste Management Incorporated. Waste Management Holdings, Inc., also owns Waste Management, Inc. of Florida.

Proposed Operations

22. The facility is proposed to be operated as a solid waste transfer station, which involves smaller solid waste collection vehicles transporting their loads to the facility, where the waste is segregated as either MSW or construction and demolition (C & D) waste. This waste is deposited on the floor of the transfer station and loaded by excavator or backhoe (and potentially a front-end loader) into larger transfer trucks,

which then take the waste to one of the landfills designated in the Notice.

23. The average daily volume of the transfer station is expected to be 300 tons of waste, although it is designed to handle up to 1,000 tons per day. If the facility reached its emergency capacity volume, Kimmins has the right to refuse the waste. Absent emergency conditions, the maximum waste storage time will be twenty-four (24) hours. On an emergency basis such as the aftermath of a hurricane, waste, which would be principally C & D waste, could be held for up to three (3) days.

24. The proposed building is fairly common in design, other than the fact that it is larger than normal. The additional size is sufficient to allow separate vehicles on the tipping floor for the two different types of waste (MSW and C & D) with separate entrances for those trucks. There are no apparent restrictions on vehicle movement.

25. In the event that waste can not be properly processed, due to equipment failure and the inability to secure backup equipment or adverse weather conditions, waste would not be accepted at the transfer station. The purpose of the proposed transfer station is to more effectively and efficiently transport waste to the landfill, i.e., rather than a large number of smaller collection vehicles traveling 30 to 40 miles to the landfill, a much smaller number of large transfer vehicles would

deliver the waste from the transfer station to the landfill. In this manner, truck traffic would be reduced at the landfill.

26. The result of the efficiencies derived from the transfer station may result in lower cost in delivering solid waste to the landfill, cost reductions that would be realized by Waste Management and, if the City of Jacksonville chose to utilize the transfer station, would be shared by the City and its taxpayers.

27. There is an additional benefit because fewer trucks will travel the lengthy route to the landfill and the overall air emissions for the City of Jacksonville are expected to be generally reduced, although the specific reductions were not quantified.

Rule Requirements not in Dispute

28. A review of the Pre-hearing Stipulation reveals that the following subsections of Rule 62-701.801, Florida Administrative Code, are not in dispute: (2), (2)(c)(1), (2)(c)(6), (3)(a), (3)(d), (3)(e), (4)(b), and (4)(e)-(g).

Rule Requirements in Dispute

Rule 62-701.801(2)(c)2., Florida Administrative Code-
Machinery and Equipment

29. Section 4.2 of the Notice of Intent describes the machinery and equipment to be used and specifically names the

loader, excavator, and transfer trailers and their respective cubic yard capacity.

30. Table 2 of the Notice of Intent specifically sets forth the loading capacities of the excavator and loader, including cubic yards per hour, tons per hour and tons per day. The loading capacities of either the excavator or wheel loader individually (respectively 1,166 and 1,604 tons per day) exceeds the anticipated handling capacity of approximately 1,000 tons per day.

31. The requirements of the rule with respect to machinery and equipment have been met.

Rule 62.701.801(2)(c)3., Florida Administrative Code-
Transfer Plan

32. Section 4.3 of the Notice of Intent, in conjunction with the revised transfer route in Kimmins' Exhibit j, sets forth the proposed transfer plan.

33. The transfer plan sufficiently describes the transfer route, which has been amended to avoid having collection vehicles and transfer vehicles traverse the neighborhood south of the facility. The new route generally transgresses an industrial area.

34. Kimmins will ensure that this specified route will be followed by controlling Waste Management's own trucks; contract provisions with other users of the facility; and video monitoring

to ensure that trucks enter and leave Stockton Street north of the facility. Ultimately, a carrier's failure to comply with this requirement will result in the withdrawal of that carrier's right to use the transfer station.

35. The types of transfer vehicles to be used are described in Section 4.3.2. While the average number of trucks can be determined by dividing the average expected daily volume of 300 tons per day by the legal limit of 22 tons per transfer trailer, it is anticipated that volume will vary. To meet this varying demand, Kimmins will subcontract out the hauling of waste by transfer trailers, so that trucks will be available on an as-needed basis.

36. With respect to the timing of the transfer of solid waste, Section 4.1.3.4 provides that waste will be handled "on a first-in, first-out basis to the extent practical. Transfer trucks will be loaded as soon as waste is available."

37. Kimmins has provided a transfer plan meeting the requirements under the rule for the General Permit.

Rule 62.701.801(2)(c)5., Florida Administrative Code-
Staffing

38. Section 4.5 of the Notice of Intent describes the personnel procedures for the proposed transfer station and sets forth the hiring plan in Section 4.5.1 and the training plan in Section 4.5.2.

39. The minimum personnel listed in the Notice of Intent is based on the average of 300 tons per day. If that amount of waste were exceeded, the number of trained employees would be increased to meet the increased load.

40. Waste Management encourages its employees to become certified and, to encourage that training, it not only pays for the training, but also provides a wage incentive. As a result that program is typically utilized by its employees.

41. The laborer listed in Section 4.5.1 as part of the staffing component would be a person trained as a "spotter," i.e., a person who could identify unauthorized waste as well as putting trucks in the correct area to dump their load.

42. In addition to the training described by Mr. Mathes, there is periodic retraining of employees including review of prohibited and restricted material as well as emphasis on compliance with permits.

Rule 62-701.801(3)(b), Florida Administrative Code-
Ventilation for Tipping, Processing, Sorting, Storage, and
Compaction Areas

43. Section 4.7.2 of the Notice of Intent describes the ventilation system design and states that all tipping, storage and loading areas are located within the building.

44. The facility is completely open on its north face which serves as ventilation. Additionally, there are three (3) fans that can be utilized to provide ventilation for the facility,

either drawing air in or drawing out as needed. The ventilation system for the facility, although minimal from an equipment standpoint, complies with the requirements for the General Permit.

Rule 62-701.801(2)(c)4., Florida Administrative Code-
Drainage

45. Section 4.4 of the Notice of Intent describes the drainage and water supply systems for the proposed facility, which also serves as the leachate control system. See also Kimmins' Exhibit f (revised site plan). The following discussion regarding drainage overlaps significantly with the later discussion of the leachate control system and potential contamination of McCoys Creek. Some of the findings are repeated in light of the specific issue discussed.

46. The purpose of the leachate control system is to collect all liquids that come in contact with the waste to be routed through some form of treatment process, in this case an oil/water separator and then into the sanitary sewer system for ultimate treatment at the publicly-owned wastewater treatment plant. All of the concrete floors in the facility will be finished to provide a positive slope to the floor drains, which will have traffic bearing clean-outs and gutters. The building walls and the three-inch curb will also serve to confine leachate

within the building and prevent it from mixing with stormwater. See also Findings of Fact 54-68.

47. The system, which utilizes an eight-inch pipe for ease of operations to clean out and for maintenance, is more than adequate to handle the anticipated liquids. If the pipe were sized to handle the amount of leachate generated, it would need to be only two-to-three inches in diameter.

48. The stormwater management system is planned to prevent rainwater from being directed from the parking area into the building. Instead, rainwater is expected to be diverted around the building into the existing retention pond. The parking area "apron" slopes up to the building to prevent water from flowing inside the facility. It is expected that the rainwater will flow east or west to the stormwater retention pond. Additionally, the proposed three-inch curb would prevent stormwater from flowing into the facility, notwithstanding the slope.

49. Ms. Clem, an expert in stormwater design and permitting, noted that she has reviewed the existing stormwater permit and, because no additional impervious area is being proposed to be added near the site, believes there is no reason that a permit modification would be required, nor would the change in use require permit modification.

50. Fires at transfer stations are not at all common. With the updated and modernized sprinkler system anticipated to be

part of the building improvements, there would be zoning of the sprinkler system and the ability to shut off a leaking source from the system.

51. If a fire occurred during the day, there would be people on-site to deal with the fire and there would be appear to be very little sprinkler water involved.

52. Even if a fire were to happen at night, there are approximately one to two hours of storage capacity within the facility even if the drains were blocked, and if the drainage systems were operating, it is anticipated that they would be able to adequately handle the sprinkler water without overflowing the curb, although the design has not yet been completed.

53. There is no reason to believe that the stormwater management system would not operate as required to keep stormwater out of the facility and to drain into the permitted retention pond, which is south of the facility. Further, the stormwater system, which will be maintained and operated by facility personnel, is sufficient to prevent the mixing of leachate with stormwater and will prevent contamination of McCoys Creek.

Rule 62-701.801(3)(c), Florida Administrative Code- Leachate Control

54. Section 4.7.3 of the Notice of Intent generally describes the leachate control system, i.e., catch basins located

in the central portion of the unloading area and one catch basin located in the center of the loading area (where the transfer vehicles will park). The floor of the building will be sloped to drain toward the catch basin, and the liquids thus collected will be directed through pipes to an oil/water separator and then the system will be connected to an existing sanitary sewer system.

See also Finding of Fact 46.

55. By definition, the term leachate means that the substance leaches through or moves through a body.

56. There is a significant difference between the composition of the leachate at a landfill versus a solid waste transfer facility. The transfer station leachate is substantially weaker and less concentrated in strength than leachate from a landfill. There are very few liquids generated by the waste in a transfer station as most of the water which comes in contact with the floor is wash water and, at days end, the floor is washed down, which constitutes the majority of the water travelling into the system.

57. The Kimmins' leachate control system has been designed to keep all leachate within the building, to be ultimately transported through the leachate control system to the sanitary sewer system. The system is designed to be more than adequate to handle the small amounts of leachate that would be generated at a transfer station.

58. The leachate control system is comprised of the concrete transfer station floor, which is sloped toward the floor drains, the walls of the facility, and the three-inch curb that would confine the leachate to the facility. The substance flows into collection gates at two locations on the floor.

59. The effect of the system is that water, including water contaminated by leachate, cannot leave the facility other than through the floor drains or by overflowing the three-inch curb.

60. Given the large storage capacity of the floor and the "pit," where the transfer trucks pull into the facility, the only scenario under which water might overflow into the retention pond from the facility would be if a fire occurred at the facility at night and the drains for the leachate control system were blocked. If that were to occur, the retention pond has the capacity to contain the water produced by the worse case scenario with respect to fire. Any leachate that overflowed into the retention pond could be held until tested and if it was unacceptable to go into McCoys Creek, it could be handled in a number of ways, such as pumping into a nearby sanitary sewer system.

61. There is an oil/water separator included as part of the leachate control system to remove oil and any chemicals that might cling to the oil. The system, however, is not designed nor required to treat leachate. The leachate will be treated at the

publicly-owned wastewater treatment plant. See also Finding of Fact 46.

62. The connection of the leachate system to the sanitary sewer system is an appropriate way to collect, treat, and dispose of the leachate in accordance with the rules for General Permit for a Transfer Station.

63. The sanitary sewer system is operated by the local wastewater utility, JEA, and it is unclear at this time whether an industrial wastewater permit will be required for the facility. If such a permit were required, it would be obtained, assuming one were necessary, before the facility began operation. There is no requirement that Kimmins obtain a permit from JEA prior to requesting the General Permit.

64. To the extent that a JEA permit is required and there is a testing requirement, it would not have to be done on a batch sampling, but could be done in a manner that would allow continuous operation of the leachate control system. Kimmins is more likely than not to be able to comply with JEA's requirements if they are applicable, particularly given the fact that leachate generated at a transfer station is extremely diluted, i.e., "primarily wash water."

65. The facility and its stormwater management system are designed to prevent stormwater from mixing with the leachate by preventing water outside of the building from entering the

building and preventing leachate from exiting the building. There is asphalt paving approximately twenty feet to the north of the building, sloping up to the northern entrance into the building. This system includes the walls of the building and the three-inch curb at the north end of the building that would keep out water. The water is expected to flow to the east or west of the building to the stormwater retention pond to the south of the building. See also Findings of Fact 46-47.

66. There was some suggestion by the City that there would be a problem resulting from leachate leaking from trucks onto the facility's parking area. It was noted, however, that seals on trucks are standard requirements. Additionally, there is an economic incentive for haulers of waste to the facility, which are weighed and pay a fee based on weight, not to pay for processing water. The hauler would be required to correct the problem in order to continue to use the facility.

67. At worst, leachate falling onto the parking area would flow through the stormwater management system and be treated in the swales and retention pond. As Ms. Nogas stated, she did not consider this significant, stating that it would be "the same kinds of things that fall on roadways that presently drain in McCoy's Creek, nothing particular or special."

68. The overall effect of the system is to divert stormwater around the facility to the retention pond at the south

end of the site. The facility has thus been designed with a leachate control system that would prevent discharge from leachate and the mixing of leachate with stormwater as required by rule.

Rule 62-701.801(4)(a), Florida Administrative Code-
Unauthorized Waste

69. Section 4.1.3.1 of the Notice of Intent states that "Any unauthorized or prohibited wastes will not be accepted at the site," and explains that "[I]f the unauthorized waste is encountered following unloading, that waste will be immediately returned to the delivery vehicle. If the vehicle is not available, then the prohibited waste will be temporarily stored in a [forty-yard capacity box] designated as 'unauthorized waste' on the Floor Plan (Figure 3). Transport and disposal of the unauthorized waste would be performed by Environmental Remediation Services, Inc."

70. This description of the operating procedure was confirmed by Mr. Mathes who stated that there are certain types of waste that would be unauthorized and not accepted at the facility. To the extent that a problem is discovered in time, the truck that delivered it would take it back. If that course of action was not available, it would be put aside in the forty-yard container and the environmental remediation service would remove the waste. The service contract with Environmental

Remediation Services, Inc. includes emergency services and states that the company will be available on a "24/7 basis" with a contact number to be reached at "any time."

71. Further, the City has a "household hazardous waste" program. In light of these programs, there is a small, and decreasing, amount of hazardous waste encountered in solid waste.

72. The proposed method for dealing with unauthorized waste would result in it being handled in a way that would satisfy rule requirements.

Rules 62-4.530(2) and 62-701.801(4)(c) and (d), Florida Administrative Code- Air Quality; Litter, Odor, and Vectors

Overview

73. Section 4.1.3.3 of the Notice of Intent to Use describes how litter, insect, odor, and vector control will be handled. It states that all waste transfer activities will be within the closed area of the building thus minimizing litter. The facility will utilize, as necessary, extermination services of Peninsular Pest Control Services, Inc. to control flies, rats, or other vectors. Odor control will be implemented through daily maintenance of the building area; storage times will be kept to a minimum to eliminate the potential for litter, odor, vectors or insects.

74. The parties stipulated that the Notice of Intent included both an "odor control program" and an "insect and vector control program."

Litter

75. Section 4.7.2 of the Notice of Intent again reiterates that all tipping storage and loading areas are located within the building so that litter is expected to be minimal and facility staff will maintain the facility to keep all litter within the building.

76. Kimmins did not describe a litter control program in its Notice of Intent to control on and off-site litter. However, Kimmins expects a minimal amount of litter to be generated outside of the building from the waste transfer activities, which are planned to be conducted in the enclosed area of the building. Kimmins does not expect litter to be generated from the transport vehicles, either arriving at or leaving the facility. The facility will be maintained by staff to keep all litter within the building.

77. The Department representative, Ms. Nogas, a licensed professional engineer in Florida, was satisfied with the proposal to prevent litter from washing into the retention pond. To the extent that litter entered the retention pond, she noted that it would be picked up by the facility operator as part of its normal

daily operations and would not wash into McCoys Creek. "It's part of their housekeeping. It's part of what they do daily."

78. Consistent with the Notice of Intent, the engineer of record testified that he anticipated little if any litter to be generated outside the building during normal operations, consistent with his experience at other facilities operated by Waste Management. The references in the Notice of Intent as to how litter will be handled were consistent with his experience of how it is handled at other transfer stations.

Air Quality; Odors

79. While the issue of what applicable air quality standards might be applied to solid waste transfer stations will be discussed in the Conclusions of Law, the only relevant evidence concerning this matter dealt with (i) odors and (ii) dust.

80. MSM includes waste which can generate offensive odors. However, the parties stipulated that "[o]dors at a solid waste transfer station can be controlled by proper waste handling and sanitation procedures."

81. To the extent odors are present, there are a number of ways to control the odors. For example, waste that is considered inappropriate from that standpoint could be rejected; specific loads could be deodorized upon arrival. Moving the waste in and

out quickly would prevent odors from becoming a problem as it is primarily an operational issue.

82. The specific plans and procedures that would be utilized to deal with potential objectionable odors would be first and foremost housecleaning, i.e., as waste comes in it is immediately loaded onto trucks and transported to the landfill. Thus, waste will not remain on the floor long enough to develop odors. At night there would be no waste left on the tipping floor, the floor would be cleaned and washed down with water at the end of the day. Cutoff time for accepting certain types of waste could be established to coordinate with the landfill closing times in order to ensure daily removal of waste from the tipping floor.

83. To the extent that waste would remain in the facility overnight, it would be loaded into the transfer vehicles and would be tightly tarped to contain odors.

84. With respect to particular loads that are odoriferous, there are chemical mists or gels that could be applied to neutralize the odor. Additionally, it could be mixed with other waste material to encapsulate it temporarily until it is loaded out. Mr. Mathes also noted that if there is a commercial carrier for garbage routinely bringing odoriferous loads to the facility, that carrier would not be allowed to continue to use the transfer station.

85. The facility would have available to it the resources of Waste Management, and specifically its corporate-based odor initiative group that reviews technology and chemicals that have been used successfully and that knowledge base would be available to managers in Florida.

86. With respect to suggestions of the City as to how odor might be better controlled, these were shown to be impractical or unworkable. For example, designing a facility with negative air pressure would not be practical or reasonable; entirely enclosing the facility, if it were in fact possible, would require ventilation and might in fact be more detrimental than natural dispersion; the lack of a deodorizing system is of little significance and it is very rare that a transfer station would have such a system. Ms. Nogas indicated that while "most transfer stations have huge doors on them to let the trucks in," every transfer station she saw "had large open areas that are open during the time that the transfer station is operating."

87. Ms. Nogas noted that controlling odors basically involved good housekeeping and she determined that the odors could be controlled adequately. Many transfer stations have one open side.

88. To the extent that complaints are received about odors, the management can be expected to resolve the problems.

89. With respect to design issues, the engineer for the Notice of Intent stated that dust control is usually an operational issue and that he did not believe that dust could be better controlled if air filters had been included as part of the design. The Department's expert also considered the absence of air filters not to be significant.

90. Moreover, there is nothing in Rule 62-701.801, Florida Administrative Code, requiring solid waste transfer stations to specifically control dust, and it is not a typical design feature in transfer stations. Mr. Gauntt stated, however, that placing C & D material in back of the building helps the ability to control dust.

91. Operationally, the Notice of Intent referenced that the "[t]he facility will maintain on-site at all times adequate equipment to perform" "[d]ust control," and the person ultimately in charge of operations of the facility stated that a street sweeper would be present for dust control.

92. Additionally, there were a number of operational methods described for controlling dust including: not allowing dusty MSW into the facility as a first line of defense; putting up mesh screens at open bay areas; placing other material on top of a dusty load; and wetting down a dusty load if needed.

93. The Department, in its review of the Notice of Intent, reasonably believed that Kimmins could adequately control dusty material.

Vectors and Vermins

94. Pests and other vectors are not normally a serious problem in a transfer station due to housekeeping techniques.

95. Mr. Mathes reiterated that the best control of vermin and other pests is through good housekeeping methods and making sure the tipping floor is cleaned on a daily basis.

96. In addition, a pest control service will provide vector and vermin control, utilizing bait and traps for vermin and for vectors using a gel-type material to put in cracks and crevices where insects would be expected to be. If needed for any problems, the pest control service could be called on. The ability to have the pest control company come out as needed, above and beyond the quarterly treatments, is set forth in the contract.

97. The experience of those with extensive involvement with transfer stations indicates that generally traps or baits for rodents is adequate. Even Mr. Pearson agreed that vectors can be controlled without spraying by maintaining good sanitary procedures.

98. The facility can be operated in such a way that pest and vermin can be adequately controlled.

Rule 62-701.801(4)(d), Florida Administrative Code- Waste Handling/Cleaning

99. Section 4.1.3.4 of the Notice of Intent addresses waste handling and cleaning, noting that waste "will be handled on a first-in, first-out basis to the extent practical" and "[t]ransfer trucks will be loaded as soon as waste is available. All waste storage areas shall be cleaned at the end of daily operations or during continuous operation, as necessary to prevent odor and vector problems. All floors will be free of standing liquids; any liquids will be directed to the catch basins along the center of the floor (Figures 2 and 3). The catch basins are part of the leachate collection system described in Section 4.7.3."

100. As Section 4.7.3 notes, the leachate collection system connects to a sanitary sewer system so that the drainage from cleaning areas is discharged into a sanitary sewer system.

101. These statements made in the Notice of Intent were confirmed by Mr. Mathes, who testified that "[a]s waste comes in, it will be immediately loaded onto the trucks and transported to the landfill. At night there would be no waste left on the tipping floor."

102. With respect to cleaning, the floors would first be cleaned utilizing the loader which has a rubber-type strip at the bottom of the bucket to scrape any waste and get it off the

floor. The floor would then be washed with water at sixty pounds of pressure with the water running to the leachate collection system, all done on a daily basis.

103. A similar description of the cleaning, i.e., an initial "dry clean-up" removal of waste and then washing down the floor was also provided by Ms. Clem. She stated that the water would be entering the leachate collection system and then into a sanitary sewer. This is appropriate to meet the requirements of the rule.

Rules 62-701.801(1) and 62-701.300(2)(g), Florida Administrative Code- Proximity to Residential Neighborhood and Potential Contamination of McCoys Creek

104. The primary objection of the City to the Kimmins project is that the proposed transfer station is located too close to a residential neighborhood, particularly given the potential odor, noise, and pests that the City anticipates from the operation of the transfer station. Contrary to the City's position, there was ample evidence that transfer stations can be operated, without problems, in close proximity to residential neighborhoods.

105. Another issue raised by the City is the potential for contamination of McCoys Creek should the General Permit be granted.

106. Mr. Gauntt testified that he has designed and visited a number of operational solid waste transfer stations in very

close proximity to residential areas. In one case, the adjacent property was near an apartment complex and in another area was within sight of "some very high-valued homes." In these cases, there did not seem to be any serious odor problem.

107. Mr. Mathes testified that it is not unusual to have residential neighborhoods near waste transfer stations. He identified a large facility in downtown Denver processing 4,000 to 5,000 tons of waste a day near a residential neighborhood and a facility in the Houston area with neighbors right next door, within 200 to 300 feet.

108. Ms. McCreedy testified that there are solid waste transfer stations in Florida in similar proximity as the Stockton Street facility is to residential areas and that those facilities have had no noise, odor or vermin complaints.

109. With respect to the issue of noise, there is nothing specific in the General Permit rule that addresses noise or requires noise studies to be conducted. Nevertheless, the orientation of the building, which opens to the north and closes to the south, and the fact that the southeast and southwest and east walls and roof are insulated will abate noise to the south.

110. With respect to operations, all heavy equipment will operate inside of the building, the facility will comply with local and federal noise requirements, if applicable, and back-up alarms on trucks using the facility will either be muffled or

disengaged on a temporary basis to comply with the facility's operating rules to minimize noise.

111. The parties stipulated that the existing building is located 214.7 feet from the top of the nearest bank of McCoys Creek. There was no evidence presented that there would be a change to the dimensions of the existing building. The Notice of Intent indicates that all storage of solid waste, including the tipping and loading areas, will occur within the building that is enclosed on three (3) of its four (4) sides and will thus be more than 200 feet from McCoys Creek.

112. There was extensive testimony by Ms. Kerr, an active member of the community, to the effect that McCoys Creek Boulevard is frequently flooded after rain events and the water overflows the bank and becomes a lake. Ms. Kerr, familiar with the prior operation on the site, also observed litter and garbage flowing into the Creek, under dry and flood conditions. She has also observed flood waters from the Creek flowing into the property connected with the facility, but not onto or into the facility. Flood waters have also caused the Creek beds to erode, undermining the tree line.

113. However, the weight of the evidence indicates that this flooding would not adversely effect vehicles entering the transfer station from the north along Stockton Street, which is elevated north of McCoys Creek to the entrance to the facility.

Ms. Kerr also admitted that there were other entrances to Interstate I-10, west of McCoys Creek, besides the planned entrance from McDuff. Ms. Kerr admitted that the facility did not cause the flooding and would not affect the flooding that had been occurring. She also agreed that the flooding was not caused by Kimmins or its predecessors operating a facility on Stockton Street.

114. The preponderance of the evidence indicates that any flooding of McCoys Creek would not adversely impact the operations of the facility and that the operation of the facility is not likely to contaminate McCoys Creek as long as Kimmins maintains the facility in the manner presented in this proceeding. See also Findings of Fact 45-68.

Kimmins' Compliance Program

115. The facility is configured in such a way that it could be operated in compliance with the Department's rules and that Kimmins would be able to operate the facility in such a way as to meet the appropriate requirements.

116. Waste Management, under Mr. Mathes' direction, operates Trail Ridge Landfill under contract for the City of Jacksonville. The same type of environmental compliance that Waste Management utilizes at that landfill would be applied to the proposed transfer station. Even the City's representative admitted that his experience with Waste Management's operation at

Trail Ridge Landfill has been satisfactory. The Landfill Gas management that Mr. Pearson was not satisfied with has not been owned by Waste Management for more than three (3) years.

117. Additionally, Kimmins is now a Waste Management entity and would be subject to the Waste Management compliance program headed by Ms. McCreedy in Florida. That compliance program, puts the responsibility on the district manager (in this case Mr. Mathes) for overseeing the facility. Nevertheless, Ms. McCreedy reviews permits periodically to ensure that a facility operates in compliance with the permit through site inspections and periodic review of permit applications, operating records and any applicable maintenance records. There is also a compliance assurance system creating a database of permits, permit conditions and periodic recording responsibilities that she is responsible for reviewing, along with the district managers. Her experience in Florida in compliance includes overseeing thirteen (13) solid waste transfer stations and this compliance responsibility would extend to the Stockton Street facility if it is permitted.

118. With a newly-permitted facility there is a start-up procedure that would include putting operating permit requirements into the compliance database, ensuring that operators are properly trained and that personnel have received training on specific operation plans within the permit

application, all of which would be reviewed periodically. With respect to the Stockton Street facility she did not see any proposed practices or contingencies that would create compliance problems.

119. In addition to the submission of the Notice for the General Permit, there would be additional steps taken before operations could occur, i.e., detailed construction plans and specifications, overseeing of construction by an engineer, preparation of as-built drawings and certification by an engineer that construction has been done in compliance with the General Permit, with the as-built drawings and certification being submitted and accepted by the Department prior to operations beginning.

120. Additionally, other permits would be required that if not obtained, would preclude the facility from becoming operational, including the City of Jacksonville's certificate of need permitting procedure.

Kimmins' Experience

121. The witnesses presented by the City objecting to the proposed transfer station have no experience or familiarity with transfer station operations. Mr. Pearson has never obtained a permit for, operated, or managed a transfer station.

122. His familiarity with transfer stations consists primarily of visiting three (3) facilities in northeast Florida,

none of which were controlled by Waste Management. With respect to the two (2) stations handling MSW, he was not aware of the procedures they use to control vermin and odors, and conceded that facilities in relatively rural locations (as those stations were) might have different procedures for controlling odor and vermin than one located on Stockton Street, and agreed that he had not reviewed the permits for those stations and thus has no idea what DEP was told as to how they would operate.

123. Ms. Kerr has never visited an operating transfer station, and her only information is derived from speaking to people from Marietta where there were problems with a transfer station where procedures were not followed, and the problems were the result of the failure to follow procedures.

124. In contrast, the witnesses supporting the proposed transfer station have substantial experience with the permitting and operation of solid waste transfer stations.

125. Mr. Gauntt, who prepared the engineering plan for the Notice of Intent to Use, has designed and permitted transfer stations in a number of states, including Florida, and was accepted as an expert in solid waste transfer station design and permitting.

126. Mr. Mathes is an expert in solid waste management and has visited a number of operating Waste Management transfer stations.

127. Ms. Clem, accepted without objection as an expert in solid waste management design and permitting and stormwater design and permitting, has had experience in reviewing solid waste transfer station permits when she was with the Department and is familiar with the permitting requirements for such transfer stations.

128. Ms. McCreedy, accepted without objection as an expert in solid waste facility siting and permitting, permit compliance and solid waste management has been involved with the above-described compliance program for Waste Management's transfer stations within the State of Florida.

129. Ms. Nogas is a solid waste section supervisor for the Northeast District Office for the Department and in that capacity is responsible for permit review for all solid waste permits and has been since 1989.

130. Those supporting the proposed transfer station and testifying as to its compliance with the requirements of the General Permit and its ability to operate in compliance with those requirements have extensive experience with solid waste transfer stations, while those who would suggest that there may be problems in operating a solid waste transfer station, particularly one proximate to a residential neighborhood, totally lack such experience and expertise.

CONCLUSIONS OF LAW

131. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

132. The City, by stipulation, has standing to bring this proceeding to challenge Kimmins' proposed use of the General Permit.

133. Section 403.814(1), Florida Statutes, authorizes the Department "to adopt rules establishing and providing for a program of general permits under chapter 253 and this chapter for projects, which have, either singly or cumulatively, a minimal adverse environmental effect. Such rules shall specify design or performance criteria which, if applied, would result in compliance with appropriate standards adopted by the commission. Except as provided for in subsection (3), any person complying with the requirements of a general permit may use the permit 30 days after giving notice to the department without any agency action by the department."

134. General permits, including the one at issue in this proceeding, are not "issued" by the Department. General permits are established by rule adoption and the rule, itself is the general permit. The Department in Safe Harbor Enterprises, Inc. v. Robbie's Safe Harbor Marine Enterprises, Inc. and Department

of Environmental Protection, DOAH Case Number 98-3695, 1999 WL 402501, *4 n.1 (Fla. Dept. Env. Prot. March 12, 1999) stated:

Unlike other types of permits, general permits . . . are not "issued" by the Department. General permits are established by rule adoption and the rule, itself, is the general permit. See, e.g., Rule 62-701.801(1), F.A.C. A general permit rule authorizes persons to undertake an activity if: (a) the activity comes within the parameters of and complies with the criteria and conditions of the rule establishing the general permit; (b) the person submits to the Department a notice of intent to conduct activities under the authorization of the general permit rule with required supporting documents 30 days prior to conducting such activities; and (c) the Department does not take agency action within the 30-day period determining that the proposed activities are not authorized by the general permit rules relied upon by the persons giving notice. See § 403.814(1), F.S.; Rule 62-4.530, F.A.C.

135. The parties stipulated that Section 403.814, Florida Statutes, and Rules 62-4.510 through 62-4.540, 62-701.300, and 62-701.801, Florida Administrative Code, are applicable in this proceeding. (The issues regarding disputed statutes and regulations will be addressed below.)

136. Pursuant to Section 403.814, Florida Statutes, the Department promulgated a specific rule allowing the use of a general permit to construct and operate a solid waste transfer station (the General Permit). See Rule 62-701.801, Florida Administrative Code (repealed May 27, 2001).¹

137. The design and operation of the proposed solid waste transfer station comes within the ambit of the General Permit. Kimmins filed a Notice of Intent to Use the General Permit and published the requisite notice. The Department, in accordance with Section 403.814, Florida Statutes, did not take agency action determining the proposed activities were not authorized. Instead, the Department sent Kimmins a letter noting that it did not object to Kimmins' proposed use of the General Permit for the proposed solid waste transfer station, provided that the site was constructed and maintained in accordance with several additional requirements.

138. Kimmins, as the applicant, has the burden of proving entitlement to the General Permit. Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). However, as noted in City of Newberry v. Watson Construction Company, Inc. and State of Florida, Department of Environmental Protection, et. al., DOAH Case Nos. 95-0752 and 95-0753 (DEP Final Order Dec. 19, 1996), the initial burden is to present evidence of compliance with the applicable specific rules and not "evidence of compliance with every other Department standard or rule which might possibly be impacted by a proposed facility." The burden then shifts to the objector, here the City, to demonstrate that the party, here Kimmins, seeking to use the general permit, is not likely to comply with these specific rules

or is not likely to comply with air or water quality standards. As will be discussed below, Kimmins has met its burden of proof, while the City has failed to demonstrate that Kimmins is not likely to comply with the rules at issue or with applicable air or water quality standards.

139. Given the submission of a Notice of Intent to Use that meets the minimum requirements of Rule 62-701.801, Florida Administrative Code, the City's challenge to Kimmins' use of the General Permit allows any additional information necessary to provide reasonable assurance of compliance to be properly provided by Kimmins at hearing in this de novo proceeding. Hamilton County Board of County Commissioners v. State Department of Environmental Regulation, 587 So. 2d 1378, 1387 (Fla. 1st DCA 1991).

140. Rule 62-4.070, Florida Administrative Code, which requires applicants for a permit to demonstrate certain "reasonable assurances," does not implement Section 403.814, Florida Statutes, and is not otherwise applicable in this proceeding. Part I of Rule 62-4 deals with the issuance or denial of permits generally, whereas general permits are governed by Part III of Rule 62-4. Compare Rule 62-4.001, Florida Administrative Code with Rule 62-4.510, Florida Administrative Code. Moreover, as noted above, a general permit is not "issued" and there is no "application" in a general permit process. See

Safe Harbor Enterprises, Inc., 1999 WL 402501, *4 n. 1. While the right to use a general permit may be denied by the Department, the general permit itself is not denied. Rule 62-4.070 is not intended to, nor does it, apply to general permits.

141. The City claims that Chapter 403, Part IV, Florida Statutes, is applicable in this proceeding. Part IV of Chapter 403 consists of Sections 403.702 through 403.7895, which pertain generally to the subject of resource recovery and management. However, to claim that all of Part IV should be applicable is not appropriate as Part IV deals with such topics as waste tire and lead-acid battery requirements (Section 403.717), toxics in packaging (Section 403.7191), used oil disposal (Section 403.751), compost standards (Section 403.7043), and waste-to-energy facilities (Section 403.7061). None of those sections are applicable to solid waste transfer stations. The City could have specified particular sections within Chapter 403, Part IV, as being applicable to this proceeding, but chose not to do so. Its claim that Part IV in its entirety should be applicable is not availing.

142. The City also argues that Section 403.021(8), Florida Statutes, is applicable to this proceeding.² The City focused particularly on the last sentence of Subsection (8), which provides: "Furthermore, in reviewing applications for permits, the department shall consider the total well-being of the public

and shall not consider solely the ambient pollution standards when exercising its powers, if there may be danger of a public health hazard."

143. This provision is not applicable for at least two reasons. First, it applies only when the Department is "reviewing applications for permits." As previously noted general permits are issued by rule and there is no "application" for general permit, but rather a notification of intent to use. Second, this subsection has no applicability unless and until a determination has been made that "there may be a danger of a public health hazard" and there was no evidence presented establishing a public health hazard would ensue from the operation of the proposed transfer station. The City has not referenced any other subsections of 403.021, nor presented evidence to show that those subsections apply in this proceeding.

144. Rule 701.300(2)(g), Florida Administrative Code, prohibits the storage of waste within 200 feet of a water body. By stipulation, the building for the proposed facility is more than 200 feet from McCoys Creek and all activities including storage are to take place within the building. Therefore, Rule 62-701.300(2)(g), Florida Administrative Code, is inapplicable.

145. Rule 62-701.801(1), Florida Administrative Code, refers to Rules 62-4.540 and 62-701.300 (which has already been discussed). See footnote 1. Under Rule 62-4.540(4), Florida

Administrative Code, a general permit does not permit operation of the permitted activities when it, among other things, "causes harm or injury to human health or welfare; causes harm to animal, plant or aquatic life . . . or cause[s] pollution in contravention of Florida Statutes and Department rules." A preponderance of the evidence indicates that this Rule would not be violated with respect to McCoys Creek or in any other manner. Kimmins presented substantial evidence that the facility will have in place a stormwater management system that would prevent contamination of McCoys Creek.

146. There are no specific applicable air quality standards referenced under Rule 62-4.530(2), Florida Administrative Code. However, this subsection provides that: "A proposed project which may be reasonably expected to violate air quality standards, water quality standards, or drinking water standards or which will not meet the public interest requirements set forth in Chapter 403, F.S., shall not be entitled to use of a general permit."

147. Rule 62-4.530(2) would seem to require that the party challenging the proposed use of a general permit must make some showing of a reasonable expectation that one of the prohibited actions would occur. To read the rule otherwise would be to require an entity proposing to use a general permit to prove a negative. Final orders of the Department, however, in cases

involving geotechnical problems or existing odor problems, have tended to blur this distinction and suggest that an entity proposing to use a general permit provide "reasonable assurances" that it will abide by relevant Department rules and standards before it is permitted to operate. See, e.g., Edwards v. Department of Environmental Protection and Southwest Land Developers, Inc., DOAH Case Nos. 95-3712-14, 1995 WL 1053214, *10 (DEP Final Order Feb. 12, 1996) and City of Newberry, supra. The problems faced by the parties seeking to use a general permit in those cases do not exist with respect to Kimmins' proposed use of the General Permit.

148. The City failed to provide sufficient evidence that the proposed transfer station "may be reasonably expected" to violate any air, water or drinking water standards, as noted in Rule 62-4.530(2), Florida Administrative Code.

149. To the extent that standards with respect to odors or dust might be applicable, Kimmins presented a variety of methods that could be reasonably expected to prevent both odors or dust from becoming a problem.

150. Contrary to the City's assertion, Rule 62-296.320, Florida Administrative Code, is also not applicable to determining Kimmins' eligibility to use the General Permit.

151. Even if Rule 62-296.320, Florida Administrative Code, with its prohibition of "objectionable odors" applies, the steps

that Kimmins is proposing to take to prevent odors from occurring are such that the rule would not be violated. Under the standards established in Rule 62-296.300(4)(c), Florida Administrative Code, a violation does not occur simply because an emission of unconfined particulates occur. The facility operator must also have failed to take reasonable precautions to prevent the emissions. Thus, for the City to demonstrate there is a reasonable expectation that the unconfined particulate standard will be violated, it must not only show that such emissions will occur, but that Kimmins has not proposed and will not take reasonable precautions against the emission. The City has failed to make such a demonstration.

152. Rule 62-296.320(2) pertains to "objectionable odors." This term is defined in Rule 62-210.200(181), Florida Administrative Code, as "[a]ny odor present in the outdoor atmosphere which by itself or in connection with other odors, is or may be harmful or injurious to human health or welfare, which unreasonably interferes with the comfortable use and enjoyment of life or property, or which creates a nuisance." Under this standard, the City must demonstrate there is a reasonable expectation that the proposed transfer station will create odors so strong, intense or noxious that they are legally classified as "objectionable odors" according to this definition. To do so, the City would have to demonstrate either a reasonable

expectation that the chemical constituents and concentration of any odors is or may be injurious or harmful to human health or welfare or would have to show a reasonable expectation that the nature, strength, frequency and duration of any odors will unreasonably interfere with the comfortable use and enjoyment of the life or property of the neighbors or create a nuisance. The City has failed to make such a demonstration.

153. The other portion of Rule 62-4.530(2), Florida Administrative Code, referred to above, deals with projects which "will not meet the public interest requirements set forth in Chapter 403, F.S." The City cites to Section 403.021(8), Florida Statutes, in support of its public interest argument, see, e.g., City's Memorandum of Law, page 5, which is not applicable for the reasons stated herein. Nevertheless, the proposed transfer station is expected to reduce overall air emissions due to fewer truck trips to the landfill. While air emissions in the immediate vicinity of the transfer station might increase, it was not shown that the surrounding neighborhood as a whole would be adversely affected, as the trucks using the transfer station would in all likelihood otherwise be traversing Interstate I-10, which is within one-half mile of the transfer station facility. Finally, the economic benefits of a transfer station would be available to the City of Jacksonville and its taxpayers to some degree. While these are not issues directly addressed by the

public interest requirements of Rule 62-4.530(2), Florida Administrative Code, they demonstrate, that in the aggregate, the proposed transfer station would have benefits to the public.

154. The evidence shows that Kimmins has met the requirements of Rule 62-701.801(2)(c) 2., 3., 5., and (3)(b), Florida Administrative Code, dealing with machinery and equipment, the transfer plan, staffing, and ventilation, respectively.

155. The drainage/leachate control system was well described and, along with the stormwater management system for the facility, was shown to be sufficient to appropriately deal with leachate and keep stormwater out of the facility. Kimmins complies with the requirements of Rule 62-701.801(2)(c) 4., Florida Administrative Code.

156. The leachate control system was designed to be more than adequate to handle the quantity of leachate anticipated and, through its connection to the sanitary sewer system, will provide adequate treatment and preclude discharge. The design of the facility will also meet all reasonable assurances that may be necessary that leachate will not mix with stormwater. Kimmins complies with the requirements of Rule 62-701.801(3)(c), Florida Administrative Code.

157. The requirements of Rule 62-701.801(4)(a), Florida Administrative Code, that unauthorized waste not be accepted and

that a plan for handling unauthorized waste be addressed, are again satisfied. The Notice of Intent, as well as the testimony of Mr. Mathes, makes clear that both unauthorized and prohibited waste would not be accepted and that contingency plans would be in place and would be more than adequate to handle any unauthorized waste that did find its way to the proposed transfer station.

158. The control of litter, insects, odor, and vectors to prevent sanitary nuisance and unsightly appearance, as required under Rule 62-701.801(4)(c), Florida Administrative Code, was discussed in some detail. Kimmins has considered these issues and has proposed methods that meet any requirement of "reasonable assurance" or "reasonable expectation" that such problems would not occur at the proposed facility.

159. The requirements of Rule 62-701.801(4)(d), Florida Administrative Code, regarding waste handling and cleaning, are met. Waste will be handled on a "first-in, first-out basis to the extent practicable." The necessary cleaning as required by the rule and the drainage into sanitary sewers or the equivalent was more than amply demonstrated by Kimmins.

160. Furthermore, as noted in the Findings of Fact 104-114, the City's primary objection to the proposed transfer station was that it is to be located too close to a residential neighborhood because of the anticipated odor, noise, and pests anticipated

from the transfer station's operations. The concerns regarding, odor, noise, pests, as well as any potential contamination of McCoys Creek, have been adequately addressed by Kimmins. Additionally, there were a number of examples presented by several witnesses showing that solid waste transfer stations exist, in similar proximity to residential areas as the Stockton Street facility, and have been operated without complaints from their neighbors.

161. Kimmins has provided "reasonable assurances" that it meets the requirements to use the General Permit in light of the evidence presented as to the design and operation of the transfer station and the fairly sophisticated waste management compliance program that would be available to the Stockton Street transfer station.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a Final Order be entered finding that Kimmins' proposed Stockton Street solid waste transfer station qualifies for the General Permit.

DONE AND ENTERED this 6th day of September, 2001, in
Tallahassee, Leon County, Florida.

CHARLES A. STAMPELOS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of September, 2001.

ENDNOTES

^{1/} Rule 62.701.801(1), Florida Administrative Code, provides:
"General Permit: A general permit is hereby granted to any person
for the construction and operation of a solid waste transfer
station that has been designed or will be operated in accordance
with the standards and criteria set forth in Rules 62-540 and 62-
701.300, F.A.C. and this section."

^{2/} Section 403.021(8), Florida Statutes: "The Legislature further
finds and declares that the public health, welfare, and safety
may be affected by disease-carrying vectors and pests . . .
Furthermore, in reviewing applications for permits, the
department shall consider the total well-being of the public and
shall not consider solely the ambient pollution standards when
exercising its powers, if there may be a danger of a public
health hazard."

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.